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BY ECF AND EMAIL

The Honorable Katherine Polk Failla
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: In re Tether and Bitfinex Crypto Asset Litigation, No. 19 Civ. 9236 (S.D.N.Y.) (KPF)

Dear Judge Failla:

We write on behalf of the B/T Defendants to seek leave to file the attached nine-page sur-reply memorandum addressing new arguments regarding “good cause” and futility that Plaintiffs first raise in their reply (Dkt. No. 515, “Reply”) in support of their motion for leave to amend, as well as the fifteen exhibits that accompany it. The B/T Defendants’ proposed sur-reply is attached hereto as Exhibit A.

As the Court noted at the October 31, 2023 conference, Plaintiffs made no attempt in their opening brief to satisfy their burden of demonstrating “good cause” under Rule 16(b). (Dkt. No. 493, Tr. at 20-21; Dkt. No. 505, Opp’n at 17-18.) The Court “need not consider” arguments “raised for the first time on reply.” *Blackrock Allocation Target Shares: Series S Portfolio v. Wells Fargo Bank Nat’l Ass’n*, 247 F. Supp. 3d 377, 415 n.19 (S.D.N.Y. 2017). To the extent the Court does consider those arguments, the B/T Defendants request that the Court permit the B/T Defendants an opportunity to respond. *See Sec. & Exch. Comm’n v. Ripple Labs, Inc.*, 2022 WL 329211, at *3 (S.D.N.Y. Feb. 3, 2022) (“Courts grant leave to file sur-replies when they address arguments raised for the first time in a reply brief.”)

Similarly, although Plaintiffs address futility in their opening brief, it is only in the Reply that they respond to the B/T Defendants’ arguments as to why Plaintiffs’ new claims “could not withstand a motion to dismiss.” *Lucente v. Int’l Bus. Machines Corp.*, 310 F.3d 243, 258 (2d Cir. 2002). For example, Plaintiffs argue for the first time in the Reply that [REDACTED]

[REDACTED] and that purported “commingling” of USDT and U.S. dollars on the Bitfinex exchange (which is not even possible) somehow caused an artificial bitcoin price premium on that exchange. Plaintiffs also address extraterritoriality only in the Reply. The proposed sur-reply is targeted and responds to certain of Plaintiffs’ new arguments. The B/T Defendants agreed to forego filing a separate motion to dismiss in order to streamline the briefing for the Court. (Dkt. No. 493, Tr. at 11-12.) Doing so should not deprive the B/T Defendants of an opportunity to reply to Plaintiffs’ defense of their claims.

Respectfully submitted,

/s/ Elliot Greenfield